NO. 22,026

IN THE

United States
Court of Appeals
For the Ninth Circuit

JOHN A. METHEANY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

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JURISDICTIONAL STATEMENT

In September of 1962 the Appellant John A. Metheany was indicted on one count of concealment of assets in bankruptcy and four counts alleging the making of a false oath. He was indicted along with a co-defendant, G. Ronald Dotson, who was indicted for concealment of assets (not the same assets that the appellant allegedly concealed). In March of 1964 the Defendant and his co-defendant were convicted on all counts by a jury in Phoenix, Arizona, in the United States District Court for the District of Arizona. The co-defendant G. Ronald Dotson received a sentence of probation and

the court sentenced the Defendant Metheany to two years in the custody of the Attorney General. The Defendant-Appellant Metheany was admitted to bail pending appeal and did file a Notice of Appeal and did argue and have his counsel orally argue before this Court on June 7, 1965. The co-defendant Dotson did not appeal and has subsequently been released from probation. In August, 1966, this Court reversed the conviction of the District Court on the grounds that severance should have been granted in the first trial. See*Metheany* v. *United States of America,* 365 F.2d 90 (C.C.A. 1966). Subsequently, the Honorable William Mathes was assigned by this Court to preside at the trial. Prior to the trial and motion by the Appellant the concealment count was severed from the four false oath counts. The concealment count was tried by a jury before Judge Mathes on February 6, 1967 and continued until February 8, 1967, when the jury brought in a verdict of not guilty as to the concealment count. On February 8, 1967, the jury had been impaneled and was sitting in the case concerning the four counts of false oath, a violation of Title 18, U.S.C. Section 152. Before the conclusion of the trial, Judge Mathes declared a mistrial on February 10, 1967. The false oath counts case was reset for trial on July 17, 1967, and did go to trial. The case went to the jury for deliberation on the four false oath counts on July 19, 1967, and the jury returned a verdict of guilty as to three of the four false oath counts (Counts 3, 4 and 6 of the indictment) and not guilty as to Count 5 on July 20, 1967. The defendant waived time as to sentencing and was sentenced on July 20, 1967 at 2:00 P.M. The Defendant-Appellant was sentenced to the custody of the Attorney General of the United States for a period of two years for each of the counts as to

which he was found guilty, the sentences to run concurrently. The Court further ordered that the Defendant was to become eligible for parole at such time as the Board of Paroles may determine. The Court entered an order denying bail on the grounds that the appeal was frivolous and taken for the purpose of delay within the meaning of Sub-section 2 of Section A of Rule 46 of the Rules of Criminal Procedure. Subsequently, this Court, the Ninth Circuit Court of the Court of Appeals, admitted the Defendant to bail and he is presently at liberty on bail.

This matter is before this Court pursuant to Title 28 U.S.C., Section 1291.

STATEMENT OF THE CASE

The Appellant is an attorney who resides in Phoenix, Arizona (Tr. 266). The Appellant served as an attorney for a concern known as Quality Upholstery, Inc. prior to its filing a petition in bankruptcy (Tr. 267-271-272). One Albert L. Sandoval served as the President of the concern until April of 1960 (Tr. 267). He was succeeded by Ronald Dotson (Tr. 267). On or about May 27, 1960, the Appellant received from Mr. Sandoval the sum of $5800.00, to be used for the purpose of paying various creditors of Quality Upholstery, Inc. The funds were to be used for bills of Quality Upholstery, Inc. and not Ronald Dotson (Tr. 272). In connection with this employment, the Appellant, on May 27, 1960, sent Mr. Sandoval an accounting of the disbursement of the funds (Tr. 31). The letter recited that the sum of $510 had been paid to a concern designated as Marko Fabric, and the sum of $775.80 had been paid to a concern known as Sun Drapery. The letter also recited that the sum of $97.25

was paid to a concern known as Riviera. Mr. Dotson, who was the Manager of Quality Upholstery, Inc. testified that the corporation did not have any creditors by this name (Tr. 197). A petition in bankruptcy was filed by Quality Upholstery, Inc. on June 17, 1960 (Tr. 72). The attorney for Quality Upholstetry, Inc. in the bankruptcy proceedings was Ira Bergman (Tr. 69 through 72). Ira Bergman had been asked by the Appellant in June, 1960 if he would handle the corporate bankruptcy of Quality Upholstery, Inc. due to a conflict of interest (Tr. 69). Robert A. Lukas was appointed Receiver of Quality Upholstery, Inc. at the instance of the Appellant (Tr. 77). In that capacity he received information that funds had been advanced by Mr. Sandoval to the Appellant to be disbursed on behalf of Quality Upholstery, Inc. (Tr. 78-79). He endeavored without success to obtain the cancelled checks relating to the transaction (Tr. 79). Subsequently he caused to be filed a petition in the bankruptcy court for a turnover hearing. This hearing was held on January 29, 1962 before the Honorable Estes Snedecor (Tr. 80). A transcript of the proceedings of that hearing is reproduced as Appendix No. 1. On the basis of the testimony at that hearing, the Appellant was indictetd on four counts of false oath in violation of Title 18 U.S.C. Section 152. On July 17, 1967, the Appellant was convicted following trial by a jury on Counts 3, 4 and 6 of the indictment.

ARGUMENT I

The Court did not err in refusing to give Defendant's Requested Instruction Number 4. Initially it should be noted that counsel for Appellant has not reproduced the entire colloquy that occurred concerning the stock. It was as follows:

"Q. To whom did he dispose of his stock?

A. I don't know, your Honor.

Q. You don't know?

A. I know that he did; I didn't handle that transaction."

The Appellant was not asked whether a legally valid transfer of stock was effected. The question was forthright and the answer unequivocal. It was, therefore, proper to allow the jury to decide if the answer was false and knowingly and fraudulently false. That he did, indeed, handle the transaction was testified to by Ronald Dotson (Tr. 196) and Albert Sandoval (Tr. 44-52), and by government Exhibit No. 13 and government Exhibit No. 15.

ARGUMENT II

The Court did not err in not granting Defendant's Requested Instruction Number 1. The requested instruction was refused as covered; however, counsel was given an opportunity to offer any additional language for clarification (Tr. 400). The Court properly left to the jury to decide what the question meant to the Defendant when he answered (Tr. 391). In that respect see *United States* v. *Owen Lattimore,* 127 F.Supp. 405 (U.S.D.C. 1955) affirmed 98 U.S.App. D.C. 77, 232 F.2d 334, (1955); *United States* v. *Loretta Wall,* 371 F.2d 398 (6 C.A. 1967); *United States* v. *Marchisio,* 344 F.2d 653 (2 C.A. 1965); *United States* v. *Diogo,* 320 F.2d 898, 907 (2 C.A. 1963). With respect to the Requested Instructions, it is of interest to note that Appellant's Requested Instruction Number 3, which is set forth verbatim in Appendix No. 2, was withdrawn by the Appellant (Tr. 399, 400). The instruction given to the jury (Tr. 391) stated the applicable law.

ARGUMENT III

Counts III and IV of the indictment did not overlap nor were they so intermingled to the extent Appellant could not defend himself against the charges.

Count III of the indictment alleged that the Appellant was asked:

> "Mr. Metheany, do you recall the approximate date on which you ceased to act as attorney for Quality Upholstery, Inc.?"

The said defendant gave the answer, "The approximate date would be the first of March, 1960."

The indictment further stated that the Appellant had continued in the capacity as attorney for Quality Upholstery, Inc. until on or about June 1, 1960. The government introduced evidence to show this answer was false by the testimony of Donald Elert (Tr. 102-105); Gertrude Hall (Tr. 154-160); Ronald Dotson (Tr. 189-192); Joseph Miller (Tr. 96-100); as well as government's Exhibit No. 6 and government's Exhibit No. 7.

Count IV of the indictment related to the following question:

> "Do you have any knowledge, personal knowledge, as to who may have acted as attorney for the corporation subsequent to that time and prior to its preparation for the filing of petition for bankruptcy?"

The said Defendant gave the answer, "Only through hearsay. I have no personal knowledge."

The indictment went on to allege that the Appellant did have personal knowledge that Ira J. Bergman had become attorney for the corporation at the Appellant's request. Attorney Bergman testified that he re-

ceived a telephone call from the Appellant in the middle of June, 1960 (Tr. 68), and prior to that had not done any work for Quality Upholstery, Inc. (Tr. 75). No evidence to the contrary was introduced. The Appellant knew of the employment of Ira Bergman as the attorney for Quality Upholstery, Inc. both by reason of the phone call and by personally being present at various Court hearings (Tr. 92); government Exhibit 31; and government Exhibit 32.

ARGUMENT IV

It was not error for the Court to admit evidence of Appellant's handling of funds entrusted to him by Albert Sandoval in connection with the trial on the false swearing counts.

Appellant's counsel, apparently for some strategic reason, chose to advise the jury that the Appellant had been acquitted on a charge of concealment of assets growing out of this bankruptcy (Tr. 207). He later referred to the same matter in the final argument (Tr. 355). Evidence concerning the handling of monies entrusted to the Appellant by Albert Sandoval was introduced solely on the question of motive as bearing on the issue of intent with relation to the alleged false statements made at the January 1962 hearing. This was emphasized by counsel for the government in opening statement (Tr. 12, 17) as well as in opening argument of government counsel (Tr. 347) and again in closing argument of government counsel (Tr. 372). The jury was also instructed as to the limited basis on which the evidence was admitted (Tr. 384). That the jury understood the instructions and faithfully followed them can be seen by the acquittal of Appellant on Count V of the indictment. This count alleged

the defendant testified falsely when he said he had no records of the bankrupt. The government contended this answer was false as the Appellant had the cancelled checks concerning the disbursement of the funds given him by Albert Sandoval. The jury apparently felt that a legitimate dispute could exist over whether the cancelled checks were the records of the bankrupt or Albert Sandoval. The evidence was properly admitted as bearing on motive. It was also properly admitted to negate lack of innocent purpose. It was incumbent on the government to show that the Appellant had a distinct purpose for refusing to turn the cancelled checks over to the Trustee in bankruptcy, and to accomplish that end gave the false answers.

Devoid of any background information concerning the handling of the Sandoval money, a jury might well surmise that the false answers were actually innocent misrecollections. It was essential to the prosecution of the case by the government to show that this was not true. See *Schwartz* v. *United States,* 160 F.2d 718 (C.A. 9, 1947), *Reed* v. *United States,* 364 F.2d 630 (C.A. 9, 1966), and Wigmore Evidence Vol. II, 306.

CONCLUSION

Appellee submits that the case was properly submitted to the jury for determination of the facts after being duly instructed as to the applicable law and that the judgment entered herein should be affirmed.

Dated this 15th day of December, 1967, at Phoenix, Arizona.

Respectfully submitted,

EDWARD E. DAVIS
United States Attorney

RICHARD C. GORMLEY
Assistant U.S. Attorney

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with these rules.

RICHARD C. GORMLEY
Assistant U.S. Attorney

(Appendices Follow)

Appendix No. 1

In the District Court of the United States
District of Arizona

In the Matter of Quality Upholstery, Inc., *Bankrupt.*	No. B-4486-Phx

Phoenix, Arizona
January 29, 1962
2:00 o'clock p.m.

Before: Hon. ESTES SNEDECOR, Referee in Bankruptcy

REPORTER'S TRANSCRIPT
OF PROCEEDINGS

Prepared for:

Mr. James J. Brosnahan, Jr.,
Assistant U.S. Attorney.

APPEARANCES:

For the Trustee,
Robert Lucas: MR. TOM ROOF
Attorney at Law

For the Respondent
John Metheany: MR. RALPH R. KNIGHT
Attorney at Law

Phoenix, Arizona
January 29, 1962
2:00 o'clock p.m.

The Court: Now we have this matter of Quality Upholstery.

Mr. Roof: Ready for the petitioner, your Honor.

Mr. Knight: If the Court please, I am Ralph Knight, attorney; I represent the respondent, Mr. John Metheany.

Mr. Roof: If the Court please, I am Tom Roof, attorney for the petitioner in this matter; this is Robert A. Lucas, trustee, who is also present.

I might acquaint the Court very briefly with what our petition is here.

The Court: I have read the petition. Are you ready to proceed?

Mr. Roof: Ready to proceed, your Honor, if the Court is ready.

We would like to ask that Mr. John Metheany, the respondent in this matter, be sworn.

JOHN METHEANY

called as a witness herein, having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Roof:

Q. Would you state your name, please.

A. John Metheany.

Q. And where do you reside, sir?

A. Phoenix, Arizona.

Q. I see. And what is your occupation or profession, sir?

A. Attorney at law.

Q. I see. Mr. Metheany, did you serve as attorney for Quality Upholstery, Inc., prior to its filing a petition in bankruptcy?

A. Some time prior thereto I did, not at the time of the filing.

Q: And at the time of the filing did you have a certain professional relationship with Mr. Albert Sandoval?

A. At the time of filing, and I take it you again refer to the Quality Upholstery bankruptcy.

Q. When I say "Upholstery," yes.

A. At that time, and for some time prior thereto, I was retained as attorney for Albert Sandoval and his father, Ignacio Sandoval, for matters concerning their interest in the corporation.

Q. Mr. Metheany, were you representing the two Mr. Sandovals about May 1, 1960?

A. In certain matters I was, yes, sir.

Q. Did Mr. Albert Sandoval send you a check about May 1, 1960, in the sum of $5,800 to disburse for and on behalf of Quality Upholstery, Inc.?

Mr. Knight: If the Court please, I am going to object to that question at this time. I don't think there is any foundation for it.

First of all, as I understand the petition on behalf of the trustee, the contentions supporting this order to show cause are predicated upon the attorney-client relationship as between the bankrupt, Quality Upholstery, and the respondent, John Metheany; and until that has been established, I think anything else is without foundation and immaterial at this time. I think it

is incumbent upon the petitioner to first establish that proposition.

Mr. Roof: If the Court please, in response to counsel's objection here, I think the Court can take judicial notice as a part of the trial the fact that the bankruptcy petition has been field, the date of its filing, the fact of the trustee's appointment; and, we believe on that basis, that the question is a proper one, your Honor.

The Court: Well, your point is that he was not acting for the bankrupt corporation?

Mr. Knight: That's right, your Honor. The question before the witness concerns a transaction with some other client.

Now, I say it is incumbent upon the petitioner at the outset of this hearing to establish an attorney-client relationship as between Mr. Metheany, the respondent, and Quality Upholstery. That is why we are here today. They have alleged that in the complaint. They say, "... as the then acting attorney for Quality Upholstery, Inc., an Arizona corporation."

Therefore, necessarily, as foundation for any question to this witness, they are going to have to establish that relationship. That is the basis of the whole order to show cause petition, and they at this time have not put any evidence before the Court concerning that relationship, which we say is a very basic foundation that they must lay before they can go further in this interrogation. That is the basis of our objection.

Mr. Roof: If the Court please, then we'll strike that question and proceed in another fashion.

The Court: All right.

Q. By Mr. Roof: Mr. Metheany, do you recall the approximate date on which you ceased to act as attorney for Quality Upholstery, Inc.?

A. The approximate date would be the first of March of 1960.

Q. Do you have any knowledge, personal knowledge, as to who may have acted as attorney for the corporation subsequent to that time and prior to its preparations for the filing of a petition for bankruptcy?

A. Only through hearsay. I have no personal knowledge.

I can state that I have seen the petitions in bankruptcy of the corporation on file in this court, which I note are signed by Ira Bergman, of whom I have personal knowledge is an attorney at law, licensed in the State of Arizona.

I might also add that I am attorney of record in this bankruptcy, not for the corporation, but for Albert and Ignacio Sandoval, and have filed documents on their behalf and as their attorney in this cause both the creditors' claim and a request that Mr. Lucas be appointed trustee in this matter.

Q. Mr. Metheany, do you have any records of the bankrupt corporation in your possession, or do you know of the location of any of the bankrupt corporation's records apart from those records, of course, which the trustee holds?

Mr. Knight: I am going to object to the form of the question. I think it's too general. It is not confining enough. Therefore, it is improper.

I think the question should be confined to a certain time or within certain dates, or at least give the witness some idea of what records the question concerns. On that ground, we will object.

The Court: I will overrule the objection. He has been asked whether he has any such information. He can tell us what information he has, and then we can go into more particular items.

The Witness: Your Honor, may I ask permission to have the Reporter reread the question to me?

The Court: Read the question.

(Question read.)

The Witness: The answer to the first part of the two-fold question, no, I have no records of the bankrupt corporation, except for copies of the creditors' claim and petition that I filed on behalf of the Sandovals.

As to the second part of the question, I know of no person outside of the possibility of the attorney for the bankrupt corporation, as I mentioned before, Ira Bergman, to whom I did turn over certain documents at the request of the trustee, and, I am advised, were then turned over to the trustee.

Q. By Mr. Roof: Calling your attention to the time on or about May 1, 1960, did you receive a check from Mr. Sandoval to disburse for and on behalf of the bankrupt corporation?

Mr. Knight: If the Court please, I am going to have to object again to this line of questioning on the ground that it is completely without foundation at this point. Now, the only evidence before the Court is that

Mr. Metheany was, on May 1st, 1960, not the attorney for Quality Upholstering. I think that the whole basis of this petition either will rise or fall on that proposition.

Any question beyond the establishment of this is going to be improper. Now, unless counsel is willing to avow that he is going to establish that Mr. Metheany was an attorney for the bankrupt on that date, I am going to object to any questions beyond that point, because that is one of the basic requirements to establish why this respondent should be here today, and haven't done it at this time, no evidence on it at all.

Mr. Roof: If the Court please, what the trustee brings before the Court is a request for records, if there are records of the corporation. Strike that.

What we are seeking is records of the corporation. There may be a dispute as to whether or not there are records or not, but I don't believe it is material that he was attorney for the corporation that date, as to whether or not he should answer the question. Probably the trustee will. The petition may be in error in stating that he is or was the attorney on the date set forth, May 1, 1960, and I think his testimony has shown that he was not.

Whether he was or was not the attorney, this affects the public interest, and he did or did not receive the check, and I believe that the Court is entitled to know that answer.

Mr. Knight: If the Court please, I am sure the Court agrees that—

The Court: Just a minute. I don't know whether I do or not, but go ahead.

Mr. Knight: I am sure the Court agrees with this: we must proceed in an orderly fashion in this matter.

The Court: Yes, I agree on that.

Mr. Knight: And certain evidence is going to necessarily have to be produced before the trustee can go further in this matter.

Now, as I take it from what counsel has just said, by their own admission they have no knowledge in fact that Mr. Metheany was the attorney for Quality Upholstering.

So I think the Court will agree that things have to be done, first things first. First we are going to have to establish that this man was their attorney before we can establish any responsibility in him or any obligation in him or any duty in him.

On that basis, we still object.

The Court: Are you basing the objection on the fact that they allege that he was the attorney for the bankrupt after the time? Is that what you are saying?

Mr. Knight: Yes, your Honor. And I say they necessarily had to, or this petition would have no legal effect at all. And they did allege it, and now they have fallen in their proof on that point. I would move that this whole thing be quashed.

The Court: I would disagree with you. They have framed this in such a way as to ask this man whether he was an attorney or not, whether he received some money from a creditor to be used in a certain manner for disbursement to creditors of the bankrupt.

Now, if he had money which was given to him for that purpose, I still think we have a right to ask him

what he did with it and whether it was disbursed accordingly.

Suppose we have an escrow agent, somebody has paid him money for the benefit of a bankrupt. We can bring him in here and ask him to account for that money. He was an agent, anyway, and money was paid to him, we assume. If he says it wasn't paid to him, that is the end of it.

But I think he should answer this question as to whether or not within, apparently, approximately a month before the filing of this petition he received money which was received to be disbursed on behalf of the bankrupt corporation. I think we can ask that question.

Mr. Knight: May I correct the Court on one point?

The Court: Yes.

Mr. Knight: I believe the Court said that the money was received or the money alleged to have been received was paid to Mr. Metheany by a creditor of the corporation. That isn't even alleged in here, that Mr. Sandoval was a creditor of the corporation.

The Court: I don't care what is alleged. I want to know whether there was money paid. We can always amend the pleadings to conform to the facts that are developed.

So I am going to overrule your objection so that he can answer, and I will ask the Court Reporter to read the question again.

(Question read.)

The Witness: In view of my testimony so far, your Honor, setting forth that I am attorney for Albert

Sandoval and was at the time covered by this question, and further, in view of the Arizona Revised Statutes, Section 12-2234, covering the privilege of attorney and client, wherein I am prohibited from testifying or divulging any matters that my clients, Albert and Ignacio Sandoval, have not given me the specific right to divulge, I must claim this privilege on their behalf and respectfully decline to answer this question.

The Court: May I ask a question or two.
By the Court:

Q. Was your client an officer of this corporation or merely a creditor?

A. He was—Was he a creditor? No, he was not a creditor.

Q. Not a stockholder?

A. He was a stockholder. And—let me think for a moment. He was—yes, he was a stockholder and a creditor prior to the bankruptcy. At the time of the bankruptcy and for roughly a month prior thereto he was no longer a stockholder or a director; he was a creditor.

Q. To whom did he dispose of his stock?

A. I don't know, your Honor.

Q. You don't know?

A. I know that he did; I didn't handle that transaction.

Mr. Roof: If the Court please, does the Court have any further questions at this point?

The Court: No.

Mr. Roof: In response to Mr. Metheany's invoking the attorney-client privilege, I would like to—this is in the nature of argument to the Court on this particular point—point out to the Court that the attorney-client privilege can be claimed by the client only. I believe that is the majority rule. That is the rule in Arizona.

It is as to those things peculiarly a matter of litigation or in the field of legal advise and not as to so-called non-legal matters which any third party or agent might do, and it can be waived, either expressly or impliedly. It can be waived expressly by the verbal recounting of the thing which is claimed to be a privilege, or it can be waived by an interception or a delivery of a written communication. And we therefore say that the attorney might not claim the privilege for and on behalf of the client.

We further urge the Court that a disbursement of funds, if in fact such thing happened, which is just an allegation before the Court at this point, would be an non-legal matter, and we make an offer of proof for the Court that it has in fact been waived—it is not in the record yet, but we would make an offer of proof to that extent, that it has been waived in writing by its delivery to third parties.

The Court: Well, do you want to offer that proof? What is it?

Mr. Roof: Pardon me? I didn't understand you.

The Court: You say you have some proof that it has been waived.

Mr. Roof: We can offer that.

The Court: That the privilege is waived?

Mr. Roof: It will require substantiation. I am anticipating counsel here, who is capable, who would want to authenticate it, and it would require bringing someone else in.

The Court: Well, what do you have to say?

Mr. Knight: I would like to be heard concerning what counsel said concerning our statute on the attorney-client privilege.

I don't have our statute in front of me, but I have read it, and read it recently, and it says in these words, "An attorney shall not, without the consent of the client, divulge, disclose . . ." et cetera.

Now, that certainly doesn't make it a situation where the client can invoke it only. It makes it a duty incumbent upon the attorney to do so.

And if he should breach it, he would be in violation of the statute, and certainly under the canons of legal ethics would be subject to censure.

So I say it requires more than a waiver by the client or invoking by the client, but actually consent to his attorney to allowing him or releasing him from the prohibition of the statute.

The Court: Well, that is my usual understanding of a statute similar to this. I am not familiar with yours.

Are you saying that his client has given him consent? Do you have any evidence to that effect?

Mr. Roof: Your Honor, we can offer it at this particular moment. It would not be subject to an attack by counsel, I am candid to admit, but we can bring to the Court someone who would authenticate the fact that the client has waived it.

The Court: Well, shall we have a continuance for that purpose?

Mr. Roof: May I consult with my client?

The Court: Yes.

Mr. Roof: Will the Court bear with us for just one moment further, please.

The Court: Yes. I agree with Mr. Knight in this respect that if the trustee had been able to prove that at the time of the filing of the bankruptcy he was attorney for the bankrupt, I think then this Court would have some jurisdiction in making him account for anything he received on behalf of the bankrupt corporation. I think that is the point you were trying to make.

Mr. Knight: Yes, sir.

Mr. Roof: If the Court please, can we strike that question and ask two or three other questions?

The Court: All right.

Q. By Mr. Roof: Mr. Metheany, did you aid in the preparation of the schedules in bankruptcy filed in this matter?

A. No. Let me qualify that. I was requested to provide information concerning creditors. In that respect, I, as attorney for the Sandovals, may, by one interpretation, have been said to have aided in the preparation of the schedules.

Q. Did you refer the corporation to Mr. Bergman for the preparation of schedules?

A. I don't recall whether—I advised any officer of the corporation whether he was a good attorney, is that what you mean?

Q. Specifically what I meant was:

Did you have anything to do with the arrangements whereby the managing officers went to Mr. Bergman for the filing of the petition in this matter?

A. I may very well have advised them or told them that he was a competent attorney. I feel that he is.

Q. Mr. Metheany, do you recall writing a letter on May 27th, 1960, to Mr. Sandoval, in Gardena, California, wherein you set forth disbursements of certain funds for and on behalf of Quality Upholstery?

A. I had considerable correspondence with Mr. Sandoval in this matter. If I can see the letter I can tell you whether it is my signature appearing on it.

Q. This is a copy only.

A. Are you going to mark this for identification? Are you going to mark this?

Mr. Roof: Yes.

The Court: Mark it as Trustee's Exhibit 1 for identification.

Mr. Knight: You haven't made an offer of this?

Mr. Roof: No, I haven't offered it in evidence.

The Witness: In answer to your question, I must again invoke the attorney-client privilege and respectfully decline to answer that question on the ground that anything concerning this transaction is the privilege extended to me by my clients, Albert Sandoval and his father, Ignacio Sandoval, and there has been no express waiver of this privilege on their behalf or by them, and in fact they have expressly requested that I do not divulge any matters concerning this transaction and that it be considered a confidential matter.

Q. Would you deny sending that letter, the original of that letter, to him?

A. Again, I must respectfully decline to answer on the same ground and for the same reason I gave before.

I do not admit or deny writing it, but I must claim the privilege. I am in the position, unfortunately, counsel, that I am an attorney for a client, and while I want in every way possible to help you and the trustee and the bankruptcy court, I cannot be put in a position where I can be liable to disbarment or civil action by my client, who has expressly advised me that this is considered a confidential relationship and a confidential matter, and because of that I must respectfully decline to answer.

Mr. Roof: If the Court please, we have no further questions, unless counsel wants to ask some.

Mr. Knight: I have no questions at this time, your Honor.

The Court: Well, are you desiring a continuation in this matter or—

Mr. Roof: No, your Honor. My client has indicated that there is not a necessity for a continuance.

We would, if the Court please, and if counsel would so stipulate, like to withdraw this from the court records.

Mr. Knight: We will so stipulate.

The Court: All right.

The Witness: May I be excused, your Honor?

The Court: Yes, you may be excused.

I will not rule expressly on the petition at this time; I will take it under advisement.

That's all.

* * * * * * *

I, JACK W. KING, do hereby certify that in the foregoing matter the proceedings were taken verbatim by me in shorthand and thereafter, under my direction, the same were transcribed into English context.

I hereby certify that the foregoing pages, numbered from 1 to 21, inclusive, constitute a full, true and accurate transcript of all proceedings had at the aforesaid hearing, done to the best of my skill and ability.

Witness my hand this 13th day of April, 1962.

Court Reporter

Appendix No. 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, v. JOHN A. METHEANY, Defendant.	NO. C-16393-Phx.

DEFENDANT'S REQUESTED
INSTRUCTION NO. 3

You are further instructed that before you may conclude that the crime of giving a false oath has been committed, it must be determined what the words meant to the defendant at the time he offered them as his testimony and then conclude that the defendant did not at that time believe in the truth of such testimony according to the meaning he ascribed to the words and phrases he used. It does not make any difference whether the statements were true or false. The defendant's belief as to their truth or falsity is the issue.

U.S. v. Lattimore, 127 F.Supp. 405 (U.S.D.C. 1955)

GIVEN.....

REFUSED.....

MODIFIED.....

Withdrawn